

REMARKS

Claims 1-53 are pending in the application. Claims 1-53 have been cancelled herein without prejudice or disclaimer of the subject matter contained therein. New claims 54-104 have been added herein.

New claims 54-104 are generally based on original claims 2-53, which have been rewritten for clarity and to correct some typographical errors in order to expedite prosecution. Support for these amendments can be found in the original claims and throughout the specification. In particular, independent claim 2 has generally been rewritten as new claim 54, independent claim 3 has generally been rewritten as new claim 100, and independent claim 4 has generally been rewritten as new claim 104. Accordingly, Applicants submit that no new matter has been added by these amendments.

After entry of these amendments, claims 54-104 will be pending in the application.

Applicants hereby respond to the Office Action dated April 13, 2005, which detailed a Restriction Requirement under 35 U.S.C. § 121 and 372. In response to the restriction requirement, Applicants hereby elect Group I, claims 1-2, drawn to a penetrant preparation, with traverse. Applicants note that claims 1-2 were directed to a use of a penetrant and have been rewritten herein as method claims to be in better form for U.S. prosecution.

Applicants contend that the subject matter of Groups I-IV, including all of the pending claims, is highly related. All of the pending claimed embodiments of the invention relate to a method for administering a pharmaceutical composition to a patient in need thereof comprising transnasally administering to the patient the specified pharmaceutical composition or to the pharmaceutical composition for transnasal administration. Such pharmaceutical compositions include highly adaptable

penetrants, which are used to transport an active ingredient across nasal mucosa despite the high water content in this mucosa.

The Office Action states that the "special technical feature lacks novelty under PCT Article 33(2) as being anticipated Inasmuch as, the technical feature does not define a contribution over the art, it is not 'special' within the meaning of PCT Rule 13.2." Applicants respectfully disagree.

The abstract of WO 98/17255 does not disclose all of the limitations of the pending independent claims.

Furthermore, M.P.E.P. § 1850 states:

If the common matter of the independent claims is well known and the remaining subject matter of each claim differs from that of the others without there being any unifying novel inventive concept common to all, then clearly there is lack of unity of invention. If, on the other hand, there is a single general inventive concept that appears novel and involves inventive step, then there is unity of invention and an objection of lack of unity does not arise. For determining the action to be taken by the examiner between these two extremes, rigid rules cannot be given and each case should be considered on its merits, the benefit of any doubt being given to the applicant.

(Emphasis added). Therefore, since the abstract of WO 98/17255 does not disclose all of the limitations of the pending independent claims, Applicants submit that there is a single general inventive concept that at least appears novel and involves inventive step.

Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the Restriction Requirement.

Further and favorable consideration of all the claims of record on the merits is respectfully requested.

Appln. No. 09/890,371
Amtd. dated October 13, 2005
Reply to Restriction Requirement of April 13, 2005

CONCLUSIONS

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with, or concession of, that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, unless specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants enclose herewith a Petition for a Five-Month Extension of Time up to and including October 13, 2005 to respond to this Restriction Requirement. Please charge our Deposit Account No. 08-0219 the \$2160 fee for this extension.

No other fees are believed to be due in connection with this response. However, please charge any underpayments or credit any overpayments to Deposit Account No. 08-0219.

If the Examiner believes that any further discussion of this communication would be helpful, please contact the undersigned at the telephone number provided below.

Respectfully submitted,



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October 13, 2005
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